

ADDITIONAL FEE

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REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

Claims 7-15 are pending. New claim 15 is supported by, for example, the specification at page 10, lines 10 ff. "Azoles" are first mentioned as a class of second ingredients, then a list of exemplary azoles is given. However, the broad mention of azoles as a class is clear and unmistakable. No new matter is introduced by the addition of claim 15.

With respect to the restriction requirement, Applicants incorporate by reference their previous arguments. However, Applicants note that the Examiner draws a distinction between related azoles such as tebuconazole and unrelated quaternary ammonium compounds or copper compounds. Accordingly, Applicants respectfully submit that the Examiner confirm his willingness to examine the entirety of new claim 15 in this single application. In the event of such confirmation, Applicants will give due consideration to canceling the remaining subject matter without prejudice to the filing of a divisional application to cover the same.

In response to Examiner's query as to reference AE at page 4 of the Office Action, Applicants point out that reference AE on PTO-1449 is a typographical error. The reference should be U.S. Patent No. 5,373,013. An Information Disclosure Statement is submitted herewith, which, among other things, corrects this typographical error.

The Examiner rejected claims 7 and 9-12 under 35 U.S.C. 103(a) as being obvious in view of Buchel et al. (US Patent No. 4,994,480), EP 0 393 746, and Worthing et al. ("The Pesticide Manual"). According to the Examiner, Buchel and EP 0 393 746 teach the claimed azole compounds, analogs and/or isomers and mixtures thereof to control microbes and to protect the industrial material claimed. In addition, the Examiner relies on Worthing to show the claimed azoles as old fungicides. Even though the Examiner does not find specific examples of the fungicides combined together, the Examiner ultimately finds that it would have been obvious to someone of ordinary skill in the art combine them to obtain a result having an additive effect.

Applicants do not believe that the Examiner has established *prima facie* obviousness, but, if he has, then Applicants submit that the present invention is characterized by unexpected results. On the former issue, the Buchel reference discloses substituted triazolylmethylcarbinol compounds of a general formula (I) which are suitable as fungicides for the protection of industrial materials. The Examiner should note that the general formula does not embrace

cyproconazole and there are no examples disclosed in that reference for combinations of cyproconazole with other fungicides or insecticides. Further, there is no hint in that reference that would have motivated a person having ordinary skill in the art to combine cyproconazole with other fungicides or insecticides in order to improve the fungicidal properties of cyproconazole in a synergistic way of action.

EP 0 393 746 is directed synergistic compositions of propiconazole and tebuconazole. Again, there is no disclosure made in this reference with respect to combinations of cyproconazole with other fungicides or insecticides and there is no hint that would have motivated a person having ordinary skill in the art to develop the claimed synergistic combinations.

Even though the compounds which are contained in the claimed combinations are old compounds, as can be seen from the Worthing reference, there are many possible combinations of old compounds.

In short, combining the teaching of these references, a person having ordinary skill in the art is not led to combinations of cyproconazole and other fungicides or insecticides.

Consequently, Applicants do not believe that the cited combination of references makes out a *prima facie* case of obviousness. Further, even if the references were combined, there still would

be no suggestion that such combination would exhibit a synergistic action, as explicitly required by the instant claims, and now demonstrated.

The foregoing is supported by the Declaration of Dr. Martin Kugler dated April 24, 2002, attached, wherein the data supports the claimed *synergistic* effect between cyproconazole and a second ingredient other than cyproconazole. An additive effect, as the Examiner's proposed combination would suggest, would have resulted in a value of X equal to 1. Clearly the data do not support this contention. "Test 1" at page 2 of the Declaration shows that when cyproconazole and propiconazole are combined, they achieve a synergistic effect as indicated by the value of 'X' equal to 0.67. Likewise, "Test 2" at page 3 shows a synergistic effect when cyproconazole and tebuconazole are combined, as indicated by the value of 'X' equal to 0.73. Thus, the data support a finding of unexpected and/or surprising results, whereby the claims are not rendered obvious by the cited references.

In view of the foregoing, Applicants submit that the Examiner would be fully justified to reconsider and to withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is, therefore, earnestly solicited.

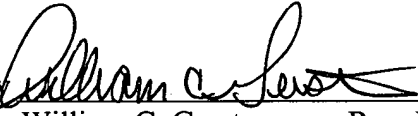
Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

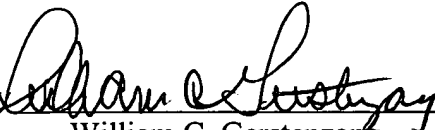
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CERTIFICATE OF MAILING

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 and accompanying Kugler Declaration are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner of Patents, Washington, D.C. 20231, on the date indicated below:

Date: July 18, 2002

By   
William C. Gerstenzang